CCRB INVESTIGATIVE RECOMMENDATION

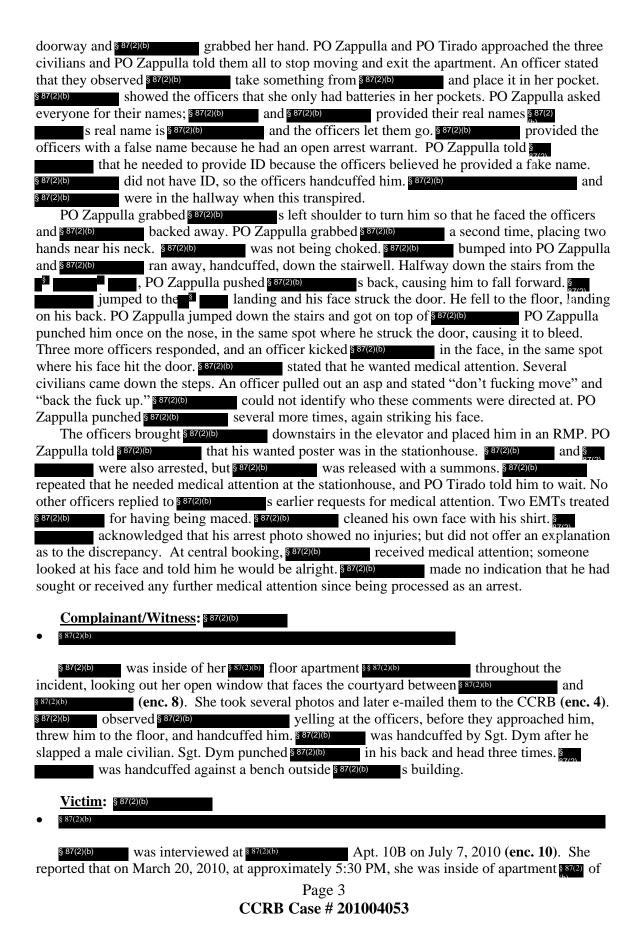
Investigator:		Team:	CCRB Case #:	Ø	Force	\checkmark	Discourt.		U.S.
Paul Baron		Team # 4	201004053	Ø	Abuse		O.L.		Injury
Incident Date(s)		Location of Incident:	•	F	Precinct:	18	Mo. SOL	I	EO SOL
Saturday, 03/20/2010 5:39 PM		§ 87(2)(b)			09	9,	/20/2011	9.	/20/2011
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CCl	RB	
Sat, 03/20/2010 5:40 PM		IAB	Phone		Fri, 03/26/	2010	12:29 PM		
Complainant/Victim	Туре	Home Addre	ess						
Witness(es)		Home Addre	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. An officer									
2. POM Frank Zappulla	30452	937783	PSA 4						
3. Officers4. POM Daniel Tirado	02052	027625	DC A 4						
5. SGT Eric Dym	03853 00577	937635 933762	PSA 4 PSA 4						
Witness Officer(s)	Shield N		Cmd Name					=	
1. DT2 David Sarni	06346		009 DET						
2. POM Daniel Silverio	23765		009 PCT						
3. SGT David Fargnoli	04911		PSA 4						
4. POM Rafael Peralta	25756	924323	PSA 4						
Officer(s)	Allegati	on			Inve	stiga	ator Recon	nme	ndation
A.POM Frank Zappulla	Abuse: F	O Frank Zappulla stopp	ed § 87(2)(b)						
B.POM Frank Zappulla	Abuse: F	PO Frank Zappulla quest	ioned § 87(2)(b)	and					
C.POM Frank Zappulla		O Frank Zappulla used p	shyeical force ageing	t					
C.I Owi Frank Zappuna	§ 87(2)(b)	O Frank Zappuna useu p	mysicai force agains	ι					
D. An officer	Force: A	n officer used physical f	orce against § 87(2)(b)						
E.POM Daniel Tirado	Abuse: F	O Daniel Tirado did not	obtain medical trea	tme	nt ===				
	for § 87(2)(

Officer(s)	Allegation	Investigator Recommendation
F.POM Daniel Tirado	Discourtesy: PO Daniel Tirado spoke obscenely to §87(2)(b)	
G.POM Daniel Tirado	Abuse: PO Daniel Tirado threatened §87(2)(b) with the use of force.	
H. An officer	Force: An officer used pepper spray against \$87(2)(b)	
I.SGT Eric Dym	Force: Sgt. Eric Dym used physical force against \$87(2)	
J. Officers	Force: Officers used physical force against § 87(2)(b)	

Case Summary

rece thro appr appr offic inter Tira and and	and \$87(2)(b) and \$87(2)(b) filed a complaint with IAB on March 20, 2010, which was ived by the CCRB on March 26, 2010 (enc. 6). The following summary was obtained ugh a combination of the statements obtained by the CCRB: On March 20, 2010, at roximately 5:30 PM, PO Daniel Tirado and PO Frank Zappulla, both assigned to PSA4, roached \$87(2)(b) and \$87(2)(b) on the of \$87(2)(b) on the of \$87(2)(b) on the of \$87(2)(b) on the other handcuffed \$87(2
	Allegation A- Abuse of Authority: PO Frank Zappulla stopped \$87(2)(b)
• .	It is recommended that Allegation A be closed as exonerated . Allegation B- Abuse of Authority: PO Frank Zappulla questioned \$87(2)(b) 87(2)(b) 87(2)(c) 1 and 87(2)(c)
•	Allegation C- Force: PO Frank Zappulla used physical force against \$87(2)(b) Allegation D- Force: An officer used physical force against \$87(2)(b) Allegation E- Abuse of Authority: PO Daniel Tirado did not obtain medical treatment for \$87(2)(b) \$87(2)(b). \$87(2)(g)
•	Allegation F- Discourtesy: PO Daniel Tirado spoke obscenely to \$87(2)(b) Allegation G- Abuse of Authority: PO Daniel Tirado threatened \$87(2)(b) with the use of force. \$87(2)(b). \$87(2)(g)
•	Allegation H- Force: An officer used pepper spray against \$87(2)(b) Allegation J- Force: Officers used physical force against \$87(2)(b) \$87(2)(b) \$87(2)(b) \$87(2)(c)
	Results of Investigation
<u>Civi</u>	ilian Statement(s)
•	Victim: § 87(2)(b)
Mar	was interviewed at the \$\frac{87(2)(b)}{20} on May 18, 2010 (enc. 9). On ch 20, 2010, \$\frac{87(2)(b)}{20} and \$\frac{887(2)(b)}{20} (his brother) approached their family's them the \$\frac{87(2)(b)}{20} (his sister) stood in the

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with her friend, \$87(2)(b) was in handcuffs, standing next to \$37(2)(b) PO Zappulla pushed \$7(2)(b) stepped in between the officers and \$37(2)(b) allowing \$37(2)(b) on the stairwell. \$37(2)(b) observed both officers catch up to \$37(2)(b) on the steps leading to the steps leading to the landing, bleeding from his face. \$37(2)(b) believed that the officers kicked him, but did not describe who did so or where \$37(2)(b) was kicked. PO Tirado told \$37(2)(b) "Back the fuck up before I mace you," and "Get the fuck upstairs before we fuck you up." PO Tirado held a nightstick and pushed it against \$37(2)(b) was standing by a gate close to \$37(2)(b) when a group of officers ran up to him and \$37(2)(b) well at the officers and "tussled" with them before an officer maced him.
Attempts to Contact Civilians • \$\frac{8}{87(2)(b)}\$ and \$\frac{8}{87(2)(b)}\$ (identified by \$\frac{8}{87(2)(b)}\$ as a witness to the allegations that occurred outside of the building) each left one voicemail with the CCRB and provided their contact numbers. \$\frac{8}{87(2)(b)}\$ s phone was then disconnected, and no other contact information could be obtained. \$\frac{8}{87(2)(b)}\$ was left two subsequent voicemails (enc. 36-37).
 \$87(2)(b) contacted the CCRB on September 29, 2010, and was told that if she wanted to make a statement, she needed to call back by October 1, 2010. \$87(2)(b) contacted the CCRB on September 29, 2010, and was told that if she wanted to make a statement and was subsequently sent two contact letters and left two phone messages. Neither civilian contacted the CCRB again to schedule an interview (enc. 36-37). \$87(2)(b) missed one scheduled appointment and was sent two subsequent contact letters, which were not returned to the CCRB; she has not contacted the CCRB since (enc. 36-37). None of the civilians had contact information for \$87(2)(b) as such, she could not be contacted or scheduled for an interview (enc. 9-10).
NYPD Statement(s):
Subject Officer: PO DANIEL TIRADO S87(2)(b) S PSA4 Sector D, March 20, 2010, from 3:00 PM to 11:35 PM; in uniform, marked RMP.
PO Tirado was interviewed at the CCRB on July 30, 2010 (enc. 13). His memo book entries corroborated his statement. At about 5:15 PM on March 20, 2010, PO Tirado and PO Zappulla conducted a vertical at \$87(2)(b) On the tenth floor they observed \$87(2)(b) in the hallway with \$87(2)(b) PO Tirado recognized \$87(2)(b) from his wanted photo. Both men were walking from apartment \$87(2) after they spoke to a female inside and closed the door. The officers asked the males to step away from the door and asked \$87(2)(b) and \$87(2)(b) if they lived in the building. \$87(2)(b) stated that \$87(2)(b) lived in apartment \$87(2) The officers asked if they had any ID, but they did not, and no one in the apartment had ID for them. The officers asked for their names. \$87(2)(b) said his name was \$87(2)(b) \$

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questioned.

The officers handcuffed § 87(2)(b)	While trying to bri	ng § 87(2)(b)	to the elevator,
stepped in between the officers	and § 87(2)(b)	allowing § 87(2)(b)	to escape
and run down the stairwell. PO Zappulla cha	ased § 87(2)(b)	down the stairs,	followed by PO
Tirado. PO Tirado observed PO Zappulla ju	mp about five steps	onto the	landing and
hold §87(2)(b) to the ground. He did no	ot observe § 87(2)(b)	fall. § 87(2)(b)	was
bleeding from his mouth. No officer punche	d or kicked § 87(2)(b)	The other	er civilians came
down the stairs and yelled at the officers. PC	Tirado took out h	is mace canister a	and told the
civilians to back up or he would mace them.	PO Tirado called t	for backup and w	ithin a few
minutes Sgt. Fargnoli and PO Peralta arrived	d. No officer cursed	d or used any phy	sical force
against the other civilians. § 87(2)(b) co	mplained of being	in pain. The offic	ers asked if he
wanted medical attention or wanted to go to			
outside and placed him in an RM	P. § 87(2)(b) was	s arrested outside	after he "tried to
push" an officer. PO Tirado did not observe	anyone punch or n	1ace § 87(2)(b)	At the
stationhouse, EMS responded to wash out §8	7(2)(b) s eyes. §	87(2)(b) W3	ashed his face in
the bathroom. PO Tirado stated that he subn	nitted a medical tre	atment of prisone	er form for §
PO Tirado did not indicate what	the form said, and	the form could no	ot be obtained by
the CCRB			

Subject Officer: PO FRANK ZAPPULLA

- § 87(2)(b)
- PSA4 Sector D, March 20, 2010, from 3:00 PM to 11:35 PM; in uniform, marked RMP.

CCRB Statement

PO Zappulla was interviewed at the CCRB on September 16, 2010 (enc. 14). His memo book entries corroborated his statement, § 87(2)(g) The officers first observed the male civilians make a hand to hand transaction with \$87(2)(b) through the open door of apartment \$87(2). \$87(2)(b) provided the name "Andrew \$87(2)(b) before the officers asked for his name. The males were asked questions about the hand to hand transaction; they stated they had exchanged batteries, and were not questioned further. After handcuffing § 87(2)(b) the officers attempted to place him on the elevator; before they could do so, \$87(2)(b) stepped in between the officers and \$87(2)(b) allowing § 87(2)(b) escape and run down the stairs. PO Zappulla chased §87(2)(b) on the stairs between the § 87(2)(b) and § started to slip and fell down the steps. PO Zappulla had not touched § 87(2)(b) before he started to fall. The side of §87(2)(b) s head and his shoulder struck the corner of the stairwell. § 87(2)(6) then fell chest first to the ground. PO Zappulla jumped down the stairs and got on top of §87(2)(b) to restrain him. PO Zappulla and PO Tirado never punched, struck or kicked § 87(2)(6) PO Zappulla turned onto his back and noticed that § 87(2)(b) was bleeding from his lip. § 87(2)(b) stated he wanted to go to the hospital and PO Zappulla told him he would receive treatment at the stationhouse. No one told § 87(2)(b) that he could not receive treatment. PO Zappulla went directly to \$87(2)(b) Hospital about fifteen minutes after exiting the building. PO Zappulla did not observe any civilian or officer use force outside of the building. PO Zappulla did not hear any officers curse.

Witness Officer: SGT. DAVID FARGNOLI

- § 87(2)(b)
- Patrol Supervisor, March 20, 2010, from 2:50 PM to 11:47 PM; in uniform, marked RMP, PO Peralta was vehicle operator.

Witness Officer: PO RAFAEL PERALTA

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§ 87(2)(b)

CCRB Statements

Sgt. Fargnoli was interviewed at the CCRB on September 20, 2010 (enc. 15). PO Peralta was
interviewed at the CCRB on October 1, 2010 (enc. 16). Their memo book entries and statements
were consistent, § 87(2)(g) When Sgt. Fargnoli and PO
Peralta reached the incident location, \$87(2)(b) was in handcuffs, standing in the stairwell.
Neither officer observed any injuries on \$87(2)(b) No officer cursed inside of the building
or physically interacted with the civilians. The officers took \$87(2)(b) towards the elevator.
stood in the officers' path and refused to move. PO Peralta told him, "Get the hell out
of the way before we arrest you." The officers brought \$87(2)(b) downstairs and placed him
in an RMP. \$87(2)(b) came outside and was yelling and cursing at the officers, causing a crowd
to form. Backing units had responded from the 5 th , 7 th and 9 th Precincts. §87(2)(b)
walked up to \$87(2)(b) in front of \$87(2)(b) and \$87(2)(b) punched him in the face.
Several officers grabbed onto \$87(2)(b) to handcuff him. \$87(2)(b) raised his arms in a
fighting stance towards Sgt. Dym, and then grabbed onto the fence to prevent being handcuffed.
Neither officer observed anyone punch §87(2)(b) or spray him with mace. §87(2)(b) was
brought to the ground and arrested because he ignored instructions to leave the location. Neither
officer observed anyone punch § 87(2)(b) Neither officer ever heard any civilian complain of
being in pain or request medical attention during the incident.

Subject Officer: SGT. ERIC DYM

- § 87(2)(b
- Patrol Supervisor, March 20, 2010, from 2:50 PM to 11:47 PM; in uniform, marked RMP, with PO Marco Galivanes.

CCRB Statement

Sgt. Dym was interviewed at the CCRB on September 20, 2010 (enc. 17). His memo book entries corroborated his statement. When Sgt. Dym and PO Galivanes ran up to the , they only observed several females screaming in the stairwell, including The officers did not physically interact with the civilians. After exiting the building, Sgt. Dym observed \$87(2)(b) cursing and threatening the officers. \$87(2)(b) got in a fighting stance, and as a uniformed officer grabbed \$67(2)(b) same in the resisted by swinging his arms in the air. Sgt. Dym and other officers handcuffed §87(2)(b) Sgt. Dym did not punch or mace § and did not observe any other officer do so. \$87(2)(6) jumped on Sgt. Dym's back while he was attempting to handcuff §87(2)(b) Sgt. Dym pulled back his arm in the air and "shrugged" her off of him. He had no physical interaction with her before she grabbed his arm and did not believe his arm struck her face. At the PSA4 stationhouse, Sgt. Dym asked all the prisoners if anyone was injured or needed medical attention. Everyone said they were fine and refused medical attention. No one had any visible injuries. \$87(2)(b) responded to the stationhouse and stated that she was punched in the stomach. She refused medical attention when it was offered.

NYPD Document(s)

Command Log

• The command log indicated that \$87(2)(b) and \$87(2)(b) were listed as having good/normal physical condition and not having requested medical attention. At 6:05 PM, Sgt. Fargnoli notified IAB about an injured prisoner (enc. 27).

Arrest Reports/Complaint Reports

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•	was arrested by PO Tirado for obstructing governmental administration and
	resisting arrest (by flailing his arms and pushing). Further investigation discovered that
	was wanted by 9 th Precinct Detective Squad. Physical force was used to restrain and control \$87(2)(b) s arrest report indicated that a chemical agent was
	used to restrain and control him. \$87(2)(b) s arrest report stated that after he was
	repeatedly told to leave, he flailed his arms and fought officers to prevent being handcuffed
	(enc. 30-31).
M	edical Treatment of Prisoner Form/Pre-Arraignment Screening Form
•	The medical treatment of prisoner form for \$87(2)(b) was ordered from PSA4 and
	central booking, but could not be located (enc. 36, 38). The pre-arraignment screening form
	indicated that [887(2)(b)] fell down a flight of stairs with NYPD. Prisoner RMA'd (refused medical attention) with NYPD, claiming no injuries" (enc. 22).
	(refused incured attention) with 1411 D, claiming no injuries (circ. 22).
Ar	rrest Photos
•	The CCRB obtained the arrest photos for \$87(2)(b) and \$87(2)(b)
	None of the arrest photos displayed any visible injuries (enc. 12).
<u>Su</u>	mmons/Arrest for Incident and Disposition
•	s arrest on March 20, 2010, was dismissed on
	§ 87(2)(b) ket (enc. 33).
•	§ 87(2)(b)
_	
Sta	atus of Civil Proceedings
•	and street
	35).
§ 87(2)(b)
	•
Ci	vilian(s) CCRB History

• This is the first CCRB complaint filed by any of the victims or complainants (enc. 3).

Subject Officer(s) CCRB History

• PO Tirado and PO Zappulla have been members of the service for five years and there are no substantiated CCRB allegations against either of them. Sgt. Dym has been a member of the service for six years and there are no substantiated CCRB allegations against him (enc. 2).

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Conclusion

•	PO Zappulla confirmed stopping \$87(2)(b) and questioning \$87(2)(b) because the
	same officer was identified as having questioned \$87(2)(b) pushed \$87(2)(b) down
	the stairs are punched §87(2)(b) all these allegations are pled against PO Zappulla.
	alleged an officer kicked him but could not identify the officer and no one
	corroborated the allegation, so it is pled against "an officer." PO Tirado confirmed
	threatening to use mace against the civilians inside of the building; therefore the discourtesy
	allegation is also pled against him. §87(2)(b) identified PO Tirado as the only officer
	who responded to his requests for medical attention; since PO Tirado heard § 87(2)(b)
	say he was in pain and was \$87(2)(b) s arresting officer, the refusal to provide medical
	attention allegation is pled against him. Sgt. Dym was identified based on physical
	description and his clothing as the officer that punched \$87(2)(b) No one could describe or
	identify the officers that brought \$87(2)(b) to the ground, so that allegation is pled against
	"officers."

Investigative Findings and Recommendations

Allegations Not Pled

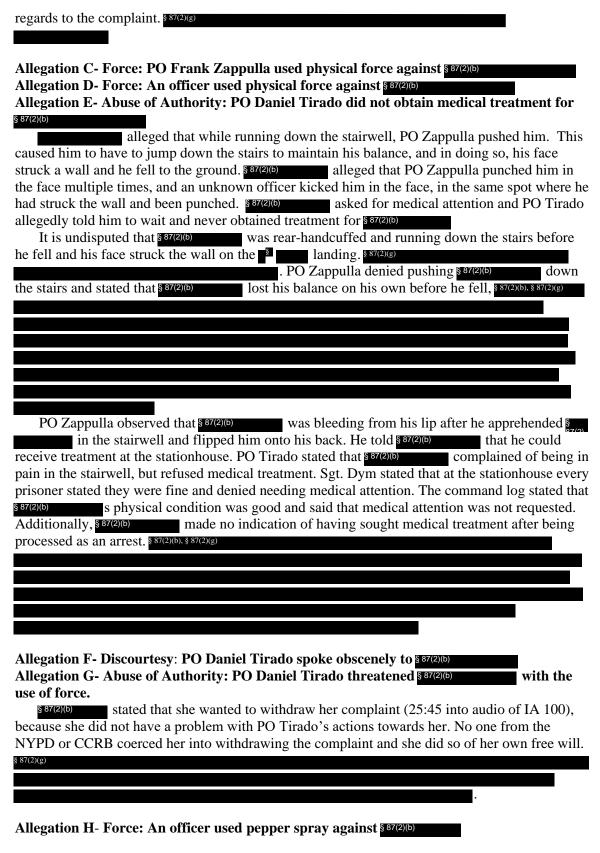
- \$87(2)(b) confirmed that he was not being choked when PO Zappulla placed his hands against \$87(2)(b) s neck. Therefore, a chokehold allegation will not be pled.
- The allegation that an officer hit server in the stomach is not being pled, because she withdrew that allegation in case #201004108 (enc. 7). Since the allegation was already disposed of and she also withdrew the complaint when making a statement for this case, the allegation is not being double pled.
- The allegation that Sgt. Dym punched \$87(2)(b) \$87(2)(b) is not being pled because it was handled in case #201004108. \$87(2)(b) (who was identified as '\$87(2)(b) in that case) withdrew her complaint. Since \$87(2)(b) was uncooperative with this case, this allegation will also not be double pled.

Allegation A- Abuse of Authority: PO Frank Zappulla stopped \$\(\frac{\partial \text{S7(2)(b)}}{\partial \text{S7(2)(b)}}\) had a warrant out for his arrest, that PO Zappulla recognized \$\(\frac{\partial \text{S7(2)(b)}}{\partial \text{S7(2)(b)}}\) from his wanted poster in the PSA4 stationhouse, and that \$\(\frac{\partial \text{S7(2)(b)}}{\partial \text{S7(2)(b)}}\) provided the officers with a false name when PO Zappulla questioned him about his identity. The \(\text{NYPD Street Encounters Guide}\) indicates that when an officer has reasonable suspicion that a person had committed a felony or penal law misdemeanor, the officer may stop and detain the subject to determine if there is probable cause to make an arrest (enc. 1a). A

Allegation B- Abuse of Authority: PO Frank Zappulla questioned \$87(2)(6) and

As explained in the attempts to contact civilians section of this report, both \$87(2)(b) and were uncooperative with the investigation and did not provide statements in

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Allegation I- Force: Sgt. Eric Dym used physical force against § 87(2)(b) Allegation J- Force: Officers used physical force against § 87(2)(b) and § 87(2)(b) As explained in the attempts to contact civilians section, both §87(2)(b) were uncooperative with the investigation and did not provide statements in regards to this complaint. § 87(2)(g) Team: _____ Investigator: _ Signature Print Date Supervisor: Title/Signature Print Date Reviewer: Title/Signature Print Date Reviewer: _ Title/Signature Print Date